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July 9, 2008

Paulette Avalos
Unemployment Insurance Legislative Services
Employment Security Department

Dear Ms. Avalos:

We have reviewed the emergency ESD draft rules resulting from the Spain/Batey Supreme Court Decision and find them to only partially address the concerns registered by the Court. In the absence of a legislative definition of "good cause" the Supreme Court acknowledged ESD's historical practice of commissioner discretion applied on a case-by-case basis. Given this, the proposed emergency WAC rules allow discretion in evaluating other changes in working conditions and unreasonable hardship factors, which could allow such factors as shift changes, payment problems, bullying, and health conditions to be the basis for good cause and trigger unemployment benefits to the individual. This makes sense, as does clarifying circumstances around Commissioner Approved Training.

However the emergency rule seems to fall short by limiting the "breadth of discretion" in determining "good cause". In our opinion the court was expansive in distinguishing ESD's discretion in determining the parameters of "good cause" on a case-by-case basis from the 11non-disqualifying reasons spelled out in the statute. As a result, the emergency rule unfairly and unreasonably limits "quit to follow" to military transfers, whereas past practice, policy, and statute has been vastly more expansive in determining good cause for "quits to follow".

The emergency rule also would disallow discretion applied to circumstances addressed by the six non-disqualifying factors in RCW 50.20.050 (2) (b) (v)-(x). As a result, for example, a worker who voluntarily left work after receiving a 10% reduction in wages, even though the reduction in wages may have constituted a substantial deterioration of working conditions and imposed an unreasonable

hardship on that worker and his/her family, would be disqualified from receiving benefits. It is our belief that the Court intends for ESD to use its discretion in determining whether this worker had good cause for leaving work separate and apart from the 11 non-disqualifying reasons.

Finally, we believe that the Court opened the door to ESD determining good cause on the broader basis of "compelling personal reasons," not the limited basis of "work related". This limitation arguably gives benefits to a worker who has had their shift changed, consequently losing their child care and as a result has had to seek new employment elsewhere, while denying benefits to a worker who has lost their child care because of changes at the child care providers' place of work. This makes no sense and under previous statutory construction the commissioner had much wider breadth of discretion under the following clause: " **or unless the commissioner determines that other related circumstances would work an unconscionable hardship on the individual were he or she required to continue in the employment."**

To be consistent with the Spain/Batey decision we would ask you to broaden your basis for applying discretion in determining "good cause" as outlined above.

Respectfully,

Jeff Johnson
Special Assistant to the President

Rebecca Johnson
Government Affairs Director